

How to  
for George  
2/24/95

## AGREEMENT

This Agreement is made as of the 1st day of February, 1995 by and between Philip Morris Incorporated, a Virginia corporation with executive offices located at 120 Park Avenue, New York, New York 10017 ("Philip Morris"), and Phoenix Marketing & Research, Inc., a New York corporation with executive offices located at 4132 Sunrise Highway, Oakdale, New York 11769 ("Phoenix"), pursuant to which Phoenix will perform services for Philip Morris under the terms and conditions stated.

### 1. Services

Phoenix will perform services for Philip Morris in connection with projects conducted by Philip Morris and third parties designated by Philip Morris (the "Program"). The precise services to be rendered, dates and locations will be described in separate Project Agreements which may be signed by the parties throughout the term of the Agreement in the form attached as Exhibit A. The first Project Agreement is attached as Exhibit B.

Phoenix will provide services in connection with: (i) the distribution of tobacco branded materials, merchandise and incentive items and smoker survey materials to smokers twenty-one years of age and older at Philip Morris' promotional booths or other sites at the locations and during the time periods set forth in the applicable Project Agreement or as otherwise designated by Philip Morris (the "Distribution Services"); (ii) pack sales, which will include the distribution or sale of branded merchandise with the purchase of cigarettes, from MARLBORO merchandising trailers, tents and kiosks at locations and during the time periods set forth in the applicable Project Agreements and as otherwise designated by Philip Morris ("Pack Sales Services"); and (iii) supervision, monitoring and support services in connection with the operation of video auto race simulating modules to be supplied by Philip Morris or third parties designated by Philip Morris (the "Module Services") at locations and during the time periods set forth in the applicable Project Agreement or as otherwise designated by Philip Morris. Phoenix will supply all services and materials, other than merchandise and uniforms, necessary for Phoenix's performance of the Agreement. Uniforms and merchandise will be provided by Philip Morris. Unless otherwise agreed to by Philip Morris, Phoenix will perform the following services in connection with each Project Agreement:

(a) Phoenix will recruit, retain, supervise and assume complete responsibility for sufficient personnel twenty-one years of age or older ("Staff"), to perform the services set forth in each Project Agreement. The recruiting and selection process of Phoenix full-time employees rendering services to Philip Morris will include drug testing and a thorough review of prior driving and employment history. If at any time Philip Morris is dissatisfied with the performance of any person performing services pursuant to this Agreement, Philip Morris will immediately notify Phoenix and Phoenix will replace that person with a person satisfactory to Philip Morris.

(b) Phoenix will develop and conduct appropriate training programs for the Staff, with all elements of the training subject to the advance approval of Philip Morris. Philip Morris may direct modifications to, attend and participate in the training sessions.

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Training must include instruction on compliance with the Philip Morris Manual (the "Manual"), a copy of which is attached as Exhibit C. Phoenix will require all Staff members to sign a statement confirming that they have read the Manual and agree to comply with the Manual as a condition of employment.

(c) Phoenix will break down and securely store all product, promotional materials and merchandise and incentive items at the conclusion of each day's services. Upon completion of services at a single location and upon completion of all services in connection with a Project Agreement, Phoenix will ship excess incentives and materials, if any, in accordance with Philip Morris' instructions. The expenses incurred are subject to the advance approval of, and will be reimbursed by, Philip Morris.

(d) Phoenix will supply equipment necessary to perform the services requested by Philip Morris and operate the equipment in a safe and secure manner.

(e) Phoenix will secure all rights, consents and permissions necessary to perform its obligations.

(f) If and when requested by Philip Morris, Phoenix will prepare and deliver written, weekly status reports of Phoenix's activities in a form satisfactory to Philip Morris, and will deliver in connection with each Project Agreement, a final wrap-up report with analysis and recommendations and total Staff-hours of services performed. If and when requested by Philip Morris, the reports will include descriptions of the comments of smokers twenty-one years of age and older and analyses of Phoenix's activities under the Agreement or any Project Agreement.

(g) Phoenix will be available to meet at reasonable times with Philip Morris representatives at Philip Morris headquarters in New York or other locations designated by Philip Morris.

(h) Phoenix will perform other services reasonably requested by Philip Morris and will perform in a professional manner in accordance with the highest industry standards for similar services in the United States.

(i) If at any time during the term of the Agreement, a member of the Staff is contacted by a consumer, the media, a local enforcement official or any third party presenting a potential or perceived interference with the smooth operation of an activity being conducted in connection with a Project Agreement, the Staff member will immediately contact the Phoenix managerial person to whom the Staff member is assigned and will distribute written materials provided by, and in accordance with the instructions of, Philip Morris. The Phoenix managerial person will immediately notify Philip Morris of the potential interference, and instruct the Staff member to terminate the activity or implement a response in accordance with directions communicated by Philip Morris.

## 2. Warranties

Phoenix warrants that performance of the Agreement and any Project Agreement will at all times be in compliance with the Manual and applicable local, state and federal laws and regulations including those relating to employment, payroll taxes, non-discrimination, OSHA, training required for the transportation and distribution of lighters and other governmental compliance. Failure to comply with the Manual or applicable laws and regulations will constitute a material breach of the Agreement and grounds for immediate termination. Phoenix further warrants that it has extensive experience in rendering services similar to the services contemplated by the Agreement, and acknowledges that Philip Morris has relied upon this warranty as a material basis for its decision to enter into the Agreement.

## 3. Payment

In consideration for the services performed and expenses incurred by Phoenix, Philip Morris will pay Phoenix and reimburse expenses, if any, in accordance with the terms of each Project Agreement. Total payments and reimbursements, if any, to Phoenix will not exceed the total amounts set forth in each Project Agreement without the advance written approval of Philip Morris. Requests for reimbursement of expenses must be itemized and submitted monthly. All expenses of \$25 or more must be submitted with receipts. All expenses in excess of \$250 must be approved in advance by Philip Morris.

## 4. Term, Termination & Renewal

The term of the Agreement commenced as of February 1, 1995 and will continue until December 31, 1995 and will automatically renew for additional one year terms unless notice of non-renewal is given, in writing, by either party no less than thirty days prior to the expiration of the initial or any renewal term. Philip Morris may terminate the Agreement, with or without cause, upon thirty days advance written notice to Phoenix. If Philip Morris terminates the Agreement without cause, Philip Morris will have no liability to Phoenix after the effective date of termination, with the exception of fees earned for services satisfactorily performed and documented expenses properly incurred prior to termination.

## 5. Records

Phoenix, its employees and agents will maintain detailed and accurate books and records of account with respect to activities undertaken on behalf of Philip Morris and will provide periodic reports as and when requested by Philip Morris. Philip Morris, its employees and agents have the right, upon reasonable advance notice and at the expense of Philip Morris, to audit, review and copy Phoenix's books and records with regard to its performance of the Agreement or any Project Agreement.

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## 6. Representatives

Representatives of Philip Morris and third parties designated by Philip Morris may be present at events conducted by Phoenix or during which Phoenix performs services in connection with the Agreement to see that the Program is conducted pursuant to the terms of the Agreement, and Phoenix will cooperate with the representatives if and when requested by Philip Morris.

## 7. Ownership

(a) All material prepared or developed by Phoenix in connection with the Agreement will become the property of Philip Morris and Phoenix hereby agrees to assign to Philip Morris any and all rights in and to the material. Phoenix will not engage, or permit the creation of any copyrightable material for Philip Morris by, any person who is not a regular full-time employee whose work is performed under Phoenix's direction and supervision and on Phoenix's business premises unless that person agrees in writing to execute an assignment to Philip Morris of any and all copyrights in and to the material in a form acceptable to Philip Morris. Upon the acceptance by Philip Morris of any copyrightable material prepared by Phoenix, Phoenix, at the request of Philip Morris, will cause any person who owns any copyright interest in any of the materials to assign all of its right, title and interest to Philip Morris and will assign all of Phoenix's right, title and interest in the material to Philip Morris and in each case will deliver an assignment in a form acceptable to Philip Morris. Phoenix will obtain all releases necessary to the proper performance of the Agreement.

(b) Philip Morris will supply, or have the right to approve or reject in advance, all elements of Philip Morris' involvement in the Program as well as all materials, including advertising, press releases, catalogs, certificates, flyers, and other promotional materials used in connection with the Program and the manner of their use. Philip Morris will provide all MARLBORO or other Philip Morris branded artwork, banners, signs and promotional materials. All materials received or stored by Phoenix are and will remain the property of Philip Morris. Phoenix acknowledges that it has no right in or to the materials and agrees not to act in any manner inconsistent with or damaging to Philip Morris' ownership rights in the materials. Phoenix will not use Philip Morris' name, logo or likeness or the name, logo or likeness of any Philip Morris product in any materials it produces or distributes without the advance, written approval of Philip Morris except that Phoenix may use materials provided to Phoenix by Philip Morris as expressly authorized in the Agreement. No materials furnished by Philip Morris will be changed without the prior written approval of Philip Morris. Phoenix will not sell, give away or allow to be sold or given away any Philip Morris materials in connection with the Agreement, other than as expressly provided in the Agreement or any Project Agreement, without the prior written approval of Philip Morris.

8. Confidentiality

Phoenix, its employees and agents will hold strictly confidential the existence and terms of the Agreement and all information and materials provided by Philip Morris to Phoenix or created by Phoenix in performing the Agreement. Phoenix will not use or disclose the information unless authorized to do so in writing by Philip Morris. Upon termination or expiration of the Agreement, or within thirty days thereafter, Phoenix will return all information and materials to Philip Morris. Phoenix's obligation to maintain the confidentiality of the existence and terms of the Agreement and all information and materials provided by Philip Morris or created by Phoenix in connection with Phoenix's performance of the Agreement will survive termination or expiration of the Agreement.

9. Third Party Contacts

If at any time Phoenix is contacted by a third party, including the media, concerning Phoenix's activities on behalf of Philip Morris, other than as contemplated by the terms of the Agreement, Phoenix will make no comment, immediately notify Philip Morris of the third party contact, and refer the third party to Philip Morris, Senior Vice President, Corporate Affairs.

10. Indemnity

(a) Phoenix indemnifies and holds harmless Philip Morris, its affiliates and their officers, employees, directors and agents from all claims, liabilities, costs and expenses, including reasonable attorneys' fees, that arise from, or may be attributable to errors, omissions or fault of Phoenix. Phoenix's obligation to indemnify and hold harmless will survive the termination of the Agreement.

(b) Philip Morris indemnifies and holds harmless Phoenix, its affiliates and their officers, employees, directors and agents from all claims, liabilities, costs and expenses, including reasonable attorneys' fees, that arise from, or may be attributable to errors, omissions or fault of Philip Morris. Philip Morris' obligation to indemnify and hold harmless will survive the termination of the Agreement.

11. Insurance

Upon execution of the Agreement, Phoenix will deliver to Philip Morris certificates of insurance evidencing coverage for: (i) comprehensive general liability, including contractual advertiser's liability, with limits of no less than \$5,000,000 combined single limit for personal injury and property damage; (ii) comprehensive automobile liability for all owned, non-owned and hired vehicles, with bodily injury limits of no less than \$5,000,000 per person, \$5,000,000 per accident and property damage limits of no less than \$5,000,000 per accident; and (iii) statutory worker's compensation coverage meeting all state and local requirements, including coverage for employer's liability with limits of no less than \$500,000. The insurance

certificates required by subparagraphs (i) and (ii) must name Philip Morris, its affiliates, employees and assigns as additional insureds and must state that Philip Morris will be provided at least thirty days advance, written notice of a cancellation or modification of the insurance. The insurance must be primary coverage without right of contribution from any other Philip Morris insurance. Insurance maintained by Philip Morris is for the exclusive benefit of Philip Morris and will not inure to the benefit of Phoenix.

12. Independent Contractor

Phoenix is an independent contractor and the Agreement shall not be construed to create an association, partnership, joint venture, relation of principal and agent or employer and employee between Philip Morris and Phoenix or any of Phoenix's agents within the meaning of any federal, state or local law. Phoenix will not enter into any agreement, oral or written, on behalf of Philip Morris or otherwise obligate Philip Morris without Philip Morris' advance, written approval.

13. Exclusivity

During the term of the Agreement, and for six months thereafter, Phoenix will not engage in consulting, merchandising or similar activities for any company or entity whose business competes with any tobacco product of Philip Morris, or the interests of which are adverse to those of Philip Morris without the prior written consent of Philip Morris.

14. Miscellaneous

(a) The Agreement and all matters collateral hereto, shall be governed by the laws of the State of New York applicable to agreements made and to be performed entirely within the State of New York, without regard to conflict of laws provisions of New York law.

(b) Phoenix must comply with all applicable laws, regulations, and ordinances relating to employment, including payroll taxes, non-discrimination and OSHA. Phoenix acknowledges that it is cognizant of the provisions of Title 15, Section 1331, et seq. of the United States Code.

(c) This Agreement is the complete agreement between the parties and supersedes any prior oral or written agreement concerning the subject matter.

(d) If any provision of the Agreement is held invalid or unenforceable, the remaining provisions will remain in effect.

(e) The Agreement may not be amended or assigned except in a writing signed by both parties. If an assignment occurs, the assignment will not relieve the assigning party of its liabilities and obligations under the Agreement. The Agreement is binding upon successors and assignees of the parties. A waiver by either party of any of the terms and conditions of the

Agreement in one or more instances will not constitute a permanent waiver of the terms and conditions.

(f) Notices provided shall be in writing and sent by certified mail, return receipt requested. Notices to Phoenix with respect to this Agreement will be sent to Phoenix Marketing & Research, Inc., 4132 Sunrise Highway, Oakdale, New York 11769, Attention: Steve Bellissimo. Notices to Philip Morris will be sent to Philip Morris Incorporated, 120 Park Avenue, New York, New York 10017, Attention: Director, Event Marketing.

PHOENIX MARKETING &  
RESEARCH, INC.

PHILIP MORRIS INCORPORATED

By: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Taxpayer ID No.: \_\_\_\_\_

Filing Status: \_\_\_\_\_